

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

LuAnne Janssen, as Personal Representative of the
Estate of Warren S. Lindvold,

Plaintiff,

vs.

Case No. 3:19-cv-79

City of Valley City,
Christopher Olson,
Wade Hannig,
Barnes County,
Barnes County Sheriff Randy McClaflin,
Julie Forsman,
Jenna Jochim,
Richard Chase,
Bruce Potts,
Jesse Burchill,
Barnes County Ambulance, Inc.,
National Medical Resources, Inc.,
Mercy Hospital of Valley City d/b/a CHI Mercy
Health,

Defendants.

**PLAINTIFF’S MEMORANDUM IN
SUPPORT OF HER
MOTION FOR A COURT ORDER
DIRECTING THE UNIVERSITY OF
NORTH DAKOTA’S SCHOOL OF
MEDICINE AND HEALTH
SCIENCES: DEPARTMENT OF
PATHOLOGY TO RELEASE
CONFIDENTIAL RECORDS
RELATED TO
WARREN LINDVOLD’S AUTOPSY**

INTRODUCTION

1. Plaintiff LuAnne Janssen as the Personal Representative of the Estate of Warren S. Lindvold has brought claims based on 42 U.S.C. 1883, medical negligence, and wrongful death related to Warren Lindvold’s arrest and incarceration on July 15, 2018 and subsequent death on July 21, 2018.

2. Plaintiff, LuAnne Janssen as the Personal Representative of the Estate of Warren S. Lindvold moves the Court for an Order directing the University of North Dakota School of Medicine and Health Sciences: Department of Pathology to release

confidential records, including any and all audio or visual materials, including but not limited to photographs and other visual images, video recordings, and audio recordings created or taken during the autopsy of Warren S. Lindvold on July 21, 2018 and the results of any and all toxicological testing or other testing completed with specimens / samples obtained from Warren S. Lindvold during or following his autopsy.

3. Further Plaintiff requests that its Order allow Plaintiff to disclose any confidential information obtained from the University of North Dakota School of Medicine and Health Sciences: Department of Pathology related to the autopsy of Warren S. Lindvold on July 21, 2018 to the Defendant's in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure.

4. In support of her Motion, Plaintiff submits the following relevant facts.

RELEVANT FACTS FOR THIS MOTION

5. The following historical description is taken from Warren Lindvold's Final Autopsy Report prepared by Dr. Mark Koponen, UND School of Medicine and Health Sciences, Pathology Department, UND Forensic Pathology, Forensic and Autopsy Service dated October 26, 2018 submitted to the Court as Exhibit 1.

6. Warren Lindvold was arrested by the Valley City Police Department on July 15, 2018. He was incarcerated at the Barnes County jail until he was transferred to Mercy CHI Hospital in Valley City and then to Sanford Health in Fargo for treatment of a C7 fracture with a large ventral hematoma pressing on his spinal cord. Mr. Linvold underwent a C7 corpectomy, posterior C4-T2 fusion and evacuation of the hematoma at Sanford Health. His condition deteriorated and he died on July 21, 2018.

7. An autopsy was ordered by the Barnes County Coroner. The autopsy was

performed by Dr. Mark A. Koponen, Forensic Pathologist at the University of North Dakota Forensic Pathology Office on July 21, 2018.

8. During the autopsy “[d]ocumentary photographs were obtained.” Also specimens were retained for “toxicological testing”, blood was retained and 15 microscopic slides were prepared and examined from tissue obtained during the autopsy. *Id.* at pages 6-7.

9. Plaintiff served a Subpoena Duces Tecum on UND School of Medicine and Health Science – Forensic Pathology on June 3, 2020. Please see Exhibit 2. Plaintiff’s Subpoena requested the UND School of Medicine and Health Science – Forensic Pathology produce:

1. Any and all audio or visual materials, including but not limited to photographs and other visual images, video recordings, and audio recordings created or taken during the autopsy of Warren S. Lindvold on July 21, 2018.
2. The results of any and all toxicological testing or other testing completed with specimens / samples obtained from Warren S. Lindvold during or following his autopsy.

10. The UND School of Medicine and Health Science responded to Plaintiff’s Subpoena by letter written by Dr. Mary Ann Sens, Chair of the Department of Pathology. Dr. Sens letter is attached as Exhibit 3. Dr. Sens stated that “digital images” from the autopsy existed but were considered “Confidential records” that could not be release without a Court Order.

DICUSSION

11. North Dakota Century Code § 44-04-18.18 subsection 1 provides that an “autopsy photograph or other visual image or a video or audio recording of an autopsy

is confidential.” North Dakota Century Code § 44-04-18.11 titled “Disclosure pursuant to subpoena or order” subdivision 2 states: “Unless disclosure under a court order is otherwise prohibited or limited by law, confidential records must be disclosed pursuant to a court order.”

12. Dr. Sens agrees that the “electronic copies of the digital images at autopsy” will be produced when Plaintiff obtains the required Court Order.

13. The autopsy records are being requested by Plaintiff in her capacity as the Personal Representative of the Estate of Warren Lindvold. The requested records are part of the autopsy process. Plaintiff needs the requested information to prepare and present her case. The information requested is well within the limits of Rule 26(b) of the Federal Rules of Civil Procedure as relevant to Plaintiff’s claims.

CONCLUSION

14. Plaintiff requests that the Court issue an Order as required by N.D.C.C. § 44-04-18.11 that will allow the UND School of Medicine and Health Science: Pathology Department to provide the information requested in Plaintiff’s Subpoena Duces Tecum.

15. Dated this 15th day of July, 2020.

/s/ Alan Baker

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